

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

April 6, 1994
AO-94-12

The Raymond L. Flynn Committee
c/o Harry P. Grill, Esq.
Kirkpatrick & Lockhart
One International Place
Boston, MA 02110-2637

RE: Reimbursement of credit card expenditures

Dear Mr. Grill:

This letter is in response to your March 3, 1994 request for an advisory opinion regarding reimbursement of credit card expenditures where the expenses were incurred by individuals using credit cards which are not in a political committee's name.

By way of background, you have stated that the Raymond L. Flynn Committee ("the Committee"), which files at the municipal level, does not have a credit card in the Committee's name. Certain individuals, most specifically the candidate and the sole signatory on the Committee's checking account, use their personal credit cards to make expenditures directly related to the Committee's activities. In turn, the Committee directly pays the outstanding credit card bills from Committee funds. The Committee lists the direct payment to the credit card institution on its campaign finance report stating the exact amount and stated purpose of each payment. You state that it has been the "custom and local practice" at the municipal level¹ to make and report such direct payments to credit card institutions on behalf of the holders of credit cards who have made expenditures for political committees.

You have not asked me to comment specifically on the Committee's activities. Rather, you have asked four questions regarding the use of personal credit cards. For purposes of clarity I will treat your questions in different order than as presented in your letter, but each question will be addressed separately.

1. Can a political committee incur and/or pay expenses by using an individual's credit card?

1. M.G.L. c. 55 does not distinguish between state and local disclosure and recordkeeping requirements. Whether filing reports at the state or local level, such requirements are generally the same.

A 1973 amendment to M.G.L. c. 55, the campaign finance law, provided that no candidate or political committee could make an expenditure for an amount exceeding fifty dollars except by check. The legislative policy expressed by this amendment was a desire to maintain a record-keeping system which could be used to verify expenditures.

The statute was further amended in 1986 to explicitly allow political committees to maintain and use credit cards. See M.G.L. c. 55, s. 9. 970 CMR 2.09 defines the disclosure requirements and other obligations applicable to committees which maintain and use credit cards.

M.G.L. c. 55, a "comprehensive" law "intended to reach all political fundraising and expenditures within the commonwealth," Anderson v. The City of Boston, 376 Mass. 178 (1978), does not contain a provision allowing political committees to directly reimburse credit card institutions on behalf of individual card holders. Although the absence of a statutory provision allowing direct payment by political committees on behalf of individuals might be seen as an indication that direct payment is prohibited, see Anderson, 376 Mass. at 186, regulations issued by this office recognize that circumstances may occasionally require individuals to make purchases for a political committee.² For example, a vendor may refuse to accept a political committee check or the person making the purchase for a political committee may not have authority to use the committee's card.

Therefore, a political committee may reimburse an individual card holder when necessary but should whenever possible make the initial payment with a committee check or a committee credit card.

2. How should a political committee (which files at the municipal level) list payments to an individual credit card holder's institution for expenditures made by that individual related to political committee activities?

The legislative purpose of ensuring accurate disclosure of expenditures, see M.G.L. c. 55, s. 18, is satisfied where a political committee pays a financial institution directly if, and only if, a political committee discloses the information required by the Chapter 55. Therefore, a political committee must disclose, on its campaign finance reports, not only payments made to financial institutions, but also the underlying payments made by the credit card holder. Specifically, disclosure must include (1) the date of each payment, the name of the financial institution paid, the purpose of the payment, and the amount of the payment; and

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2. The regulations generally address credit card expenditures by political committees and reimbursement by committees to candidates and other individuals. See 970 CMR 2.09 and 2.10. The regulations do not, however, contain a provision specifically addressing reimbursement by political committees of individuals or credit card institutions for payments made by individual credit card holders.

(2) for each payment made directly to a financial institution, the committee must also attribute amounts paid on behalf of each credit card holder, identifying (a) the name of the credit card holder, (b) the holder's address, (c) the purpose of each of the holder's expenditures, (d) the name of each vendor paid by the holder, (e) the date of each expenditure, and (f) the amount of each expenditure. To illustrate, the Schedule B or attachment to Schedule B could be completed as follows:

<u>DATE PAID</u>	<u>TO WHOM PAID</u>	<u>PURPOSE</u>	<u>AMOUNT</u>
March 14, 1994	Citibank Visa	Credit Card Reimb. for purchases made by John Doe, <u>as follows</u> :	\$700
Jan. 12, 1994	Staples	Stationery for office.....	\$100
Jan. 25, 1994	Paperama	Paper goods for 2/1 fundraiser...	\$ 50
Jan. 30, 1994	Rebecca's	Catering for 2/1 fundraiser.....	\$550

In addition to requiring disclosure of campaign finance activity, M.G.L. c. 55 also requires candidates and political committees to maintain records for verification purposes. See M.G.L. c. 55, ss. 2 and 5. Consistent with this objective, committees which pay credit card institutions on behalf of individual credit card users must not only keep records regarding payments to the credit card institutions, but must also obtain certain records from the individuals who made the initial expenditures on behalf of a candidate or committee. Originals or legible copies of all receipted bills, vouchers, and accounts evidencing reimbursed credit card use must be kept by political committees for each credit card expenditure.

3. If a political committee can incur and/or pay expenses by using an individual's credit card, should the committee pay the cardholder or the credit card institution?

If the committee complies with the recordkeeping and disclosure requirements discussed in this opinion, it may pay either the financial institution or the cardholder. However, as indicated in the previous section of this opinion, payment to the financial institution rather than the cardholder imposes additional disclosure and recordkeeping requirements. As noted above, information must be disclosed and records maintained not only regarding payments which the committee makes to the individual, but also regarding each of the individual's payments to vendors.

Therefore, if an individual makes an expenditure for the committee, whether by check, credit card, or cash, the committee should, where possible, reimburse the individual rather than pay a financial institution or other third party on behalf of the individual. To illustrate, the Schedule B or attachment to Schedule B could be completed as follows:

DATE PAID	TO WHOM PAID	PURPOSE	AMOUNT
March 14, 1994	John Doe	Reimbursement of purchases made by John Doe, <u>as follows</u> :	\$700
Jan. 12, 1994	Staples	Stationery for office.....	\$100
Jan. 25, 1994	Paperama	Paper goods for 2/1 fundraiser....	\$ 50
Jan. 30, 1994	Rebecca's	catering for 2/1 fundraiser.....	\$550

4. Are any additional filings and reports required by the political committee relating to such payments?

No. Where a committee pays an individual directly or a credit card institution on behalf of an individual, Chapter 55 does not require additional filings or reports unless the initial filing is incomplete or inaccurate.

This office does provide candidates who file reports with this office with a Form CPF 203A Reimbursement Form (a copy is enclosed, for information) which facilitates the disclosure of information which otherwise should be placed on Schedule B. Committees filing at the municipal level should inquire with the city or town clerk to determine whether the clerk has prepared a similar form. If not, committees filing at the local level may use Form CPF 203A (the enclosed form can be copied).

Certain provisions of the regulations restrict reimbursement by political committees of individual cardholders. In particular, 970 CMR 2.07(4) provides that political committees "may not acquire an item or service through any financing arrangement which would involve a loan from a corporate entity, other than a corporation organized pursuant to the provisions of M.G.L. c. 180. . . ." Any amount due to a financing company must be paid within a reasonable time, otherwise, the arrangement may be construed as a loan subject to the contribution limits established by the campaign finance law. See 970 CMR 2.07(5).

You should also note that a political committee cannot pay service charges, interest, and annual fees on behalf of an individual who happens to use his card to purchase items for the committee.³

Finally, you should note the provisions of 970 CMR 2.10, relating to reimbursements to candidates and other individuals. In particular, 970 CMR 2.10 states that reimbursement may be made only if:

3. A political committee may, however, pay service charges, interest, and annual fees incurred in connection with the committee's use of a committee credit card if the card was issued in accordance with applicable banking laws and in the ordinary course of business by the financial institution and the credit terms are commercially reasonable. See 970 CMR 2.09(3) and (4).

(2)(a) The expenditures made by said individual or candidate, for which he or she is being reimbursed is permitted by, and entirely consistent with M.G.L. c. 55 and these regulations; and . . .

(c) The individual or candidate has not been reimbursed for said expenditure, by any other individual or entity. . .

(3) A candidate or individual which has been reimbursed by a political committee, under this section may not be reimbursed, at any time, for said expense by any other individual or entity. . .

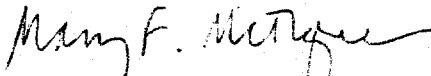
(5) Any reimbursement to the candidate or any other individual may not result in any payment of funds greater than the amount expended by the candidate or individual [on behalf of the committee].

Although a political committee may, with the limitations discussed in this opinion, reimburse a financial institution for an individual's credit card expenses, I urge committees to use a credit card in the name of the committee or to make expenditures in the first instance by using committee checks.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,



Mary F. McTigue
Director

MFM/cp
Enclosure